

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of April, two thousand sixteen.

PRESENT:

RICHARD C. WESLEY,
DEBRA ANN LIVINGSTON,
DENNY CHIN,
Circuit Judges.

XIAO LING LIAN, AKA IVY WINGYIN
WONG,

Petitioner,

v.

LORETTA E. LYNCH, UNITED STATES
ATTORNEY GENERAL,
Respondent.

14-2592
NAC

FOR PETITIONER:

Joshua Bardavid, New York, New York.

FOR RESPONDENT:

Benjamin C. Mizer, Principal Deputy
Assistant Attorney General; Linda S.
Wernery, Assistant Director; Janice

1 K. Redfern, Senior Litigation
2 Counsel, Office of Immigration
3 Litigation, United States
4 Department of Justice, Washington,
5 D.C.
6

7 UPON DUE CONSIDERATION of this petition for review of a
8 Board of Immigration Appeals ("BIA") decision, it is hereby
9 ORDERED, ADJUDGED, AND DECREED that the petition for review is
10 DENIED.

11 Petitioner Xiao Ling Lian, a native and citizen of the
12 People's Republic of China, seeks review of a June 26, 2014,
13 decision of the BIA affirming a May 8, 2013, decision of an
14 Immigration Judge ("IJ") denying Lian's application for asylum,
15 withholding of removal, and relief under the Convention Against
16 Torture ("CAT"). *In re Xiao Ling Lian*, No. A201 173 014 (B.I.A.
17 June 26, 2014), *aff'g* No. A201 173 014 (Immig. Ct. N.Y. City
18 May 8, 2013). We assume the parties' familiarity with the
19 underlying facts and procedural history in this case.

20 Under the circumstances of this case, we have reviewed both
21 the IJ's and the BIA's opinions "for the sake of completeness."
22 *Wangchuck v. Dep't of Homeland Sec.*, 448 F.3d 524, 528 (2d Cir.
23 2006). The applicable standards of review are well
24 established. 8 U.S.C. § 1252(b)(4)(B); *see also Su Chun Hu v.*
25 *Holder*, 579 F.3d 155, 158 (2d Cir. 2009).

1 Past Persecution: Adverse Credibility Determination

2 The agency may, "[c]onsidering the totality of the
3 circumstances," base a credibility finding on, inter alia, an
4 asylum applicant's demeanor, the plausibility of his account,
5 and inconsistencies in his statements and other record evidence
6 "without regard to whether" they go "to the heart of the
7 applicant's claim." 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia*
8 *Lin v. Mukasey*, 534 F.3d 162, 163-64 (2d Cir. 2008).
9 Substantial evidence supports the agency's determination that
10 Lian was not credible.

11 The IJ reasonably relied on an inconsistency between Lian's
12 hearing testimony and her airport interview in finding her not
13 credible. See *Ramsameachire v. Ashcroft*, 357 F.3d 169, 179-80
14 (2d Cir. 2004). As an initial matter, the BIA did not
15 impermissibly assess the reliability of Lian's airport
16 interview in the first instance, but simply agreed with the IJ's
17 findings and explained its reasons. See 8 C.F.R.
18 § 1003.1(d)(3)(i) ("The Board will not engage in de novo review
19 of findings of fact determined by an immigration judge. Facts
20 determined by the immigration judge, . . . shall be reviewed
21 only to determine whether [they] . . . are clearly erroneous.").
22 Moreover, the agency did not err in finding reliable the record

1 of Lian's interview, which was transcribed verbatim in question
2 and answer format, signed by Lian on each page, and conducted
3 with an interpreter. *See Ming Zhang v. Holder*, 585 F.3d 715,
4 721-22 (2d Cir. 2009).

5 At her interview, Lian stated that she had never been
6 arrested in China. However, in her asylum application and at
7 her hearing, she inconsistently stated that she had been
8 arrested and beaten in China on account of her religious
9 practice. The agency was not compelled to accept Lian's
10 explanation that she was nervous. *See Majidi v. Gonzales*, 430
11 F.3d 77, 80 (2d Cir. 2005); *see also Yun-Zui Guan v. Gonzales*,
12 432 F.3d 391, 397 n.6 (2d Cir. 2005).

13 Having questioned Lian's credibility, the agency
14 reasonably relied further on her failure to rehabilitate her
15 testimony or independently satisfy her burden of proof with
16 reliable evidence corroborating her claim of past persecution.
17 *See Biao Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007).
18 Given the inconsistency and lack of corroboration findings,
19 substantial evidence supports the agency's determination that
20 Lian was not credible as to her claim of past persecution. *See*
21 *Xiu Xia Lin*, 534 F.3d at 165-66.

1 Well-Founded Fear of Persecution: Burden

2 Absent past persecution, an alien may establish
3 eligibility for asylum by demonstrating a well-founded fear of
4 future persecution, 8 C.F.R. § 1208.13(b)(2), which must be
5 both subjectively credible and objectively reasonable,
6 *Ramsameachire*, 357 F.3d at 178. To establish a well-founded
7 fear, an applicant must show either that he would be singled
8 out for persecution or that the country of removal has a pattern
9 or practice of persecuting those similarly situated to him.
10 8 C.F.R. § 1208.13(b)(2)(iii). The agency was not compelled
11 to find that Lian established a well-founded fear of persecution
12 in China on account of her practice of Christianity.

13 As the IJ found, the country conditions evidence in the
14 record provides that between fifty and seventy million
15 Christians practice in unregistered churches in China, and that
16 in some areas their activities, including proselytism, are
17 tolerated without interference. Further, the proffered
18 evidence did not suggest greater persecution in Lian's
19 hometown. Therefore, the agency did not err in determining
20 that Lian failed to demonstrate either that officials are likely
21 to discover her religious practice, see *Hongsheng Leng v.*
22 *Mukasey*, 528 F.3d 135, 142-43 (2d Cir. 2008), or that there

1 exists "systemic or pervasive" persecution of similarly
2 situated Christians sufficient to demonstrate a pattern or
3 practice of persecution in China, *In re A-M-*, 23 I. & N. Dec.
4 737, 741 (B.I.A. 2005); *see also Santoso v. Holder*, 580 F.3d
5 110, 112 & n.1 (2d Cir. 2009).

6 Accordingly, because the agency reasonably found that Lian
7 failed to demonstrate a well-founded fear of persecution on
8 account of her practice of Christianity, it did not err in
9 denying asylum, withholding of removal, and CAT relief because
10 all three claims were based on the same factual predicate. *See*
11 *Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d Cir. 2006).

12 For the foregoing reasons, the petition for review is
13 DENIED. Any pending request for oral argument in this petition
14 is DENIED in accordance with Federal Rule of Appellate Procedure
15 34(a)(2), and Second Circuit Local Rule 34.1(b).

16 FOR THE COURT:
17 Catherine O'Hagan Wolfe, Clerk